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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 TERESA ANN GONZALEZ,

11 Defendant.

NO. 2:18-CR-0232-TOR-15

ORDER GRANTING DEFENDANT'S
MOTION TO REDUCE SENTENCE

12
13 BEFORE THE COURT are Defendant's Motion for Reduction of Sentence
14 and Motion to Expedite the same. ECF Nos. 829, 830. These matters were
15 submitted for consideration without oral argument. The Court has reviewed the
16 record and files herein, the completed briefing, and is fully informed. For the
17 reasons discussed below, Defendant's Motion for Sentence Reduction is granted.

18 **BACKGROUND**

19 On December 18, 2018, an indictment was filed charging Defendant with
20 nine counts of mail fraud and conspiracy to commit mail and wire fraud, in

1 violation of 18 U.S.C. §§ 1341, 1343, 1346. ECF No. 1. On June 13, 2019,
2 Defendant pleaded guilty to Count 73, conspiracy to commit mail and wire fraud.
3 ECF Nos. 443, 444. On January 21, 2020, this Court sentenced Defendant to ten
4 months imprisonment, followed by a three-year term of supervised release. ECF
5 No. 777. On February 19, 2020, Defendant began serving her term of
6 imprisonment by reporting to the Spokane County Jail, pending Bureau of Prisons'
7 designation and transfer. ECF No. 829 at 1. Defendant's projected release date is
8 December 18, 2020.

9 On March 23, 2020, Defendant's counsel contacted the Bureau of Prisons to
10 determine which office could process her compassionate release request based on
11 her medical condition. The Bureau of Prisons communicated that because
12 Defendant was not yet in a designated facility, there was no one able to process her
13 request. The Bureau of Prisons' employee indicated that the exhaustion of
14 administrative appeals process was not applicable or possible and suggested
15 contacting the sentencing Court for relief.

16 Defendant argues that she should be granted compassionate release based on
17 her chronic medical conditions, the nature of the medical care she has received at
18 the Spokane County Jail, and the risk of exposure and death from the COVID-19
19 pandemic.

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1 The government opposes Defendant's motion for compassionate release
2 reduction because she has not exhausted administrative remedies and she does not
3 present circumstances justifying such extraordinary relief. ECF No. 831.

4 DISCUSSION

5 A. Eligibility for Compassionate Release

6 Federal courts have the statutory authority to modify an imposed term of
7 imprisonment for two reasons: compassionate release under 18 U.S.C. § 3582(c)(1)
8 or based on a change in the sentencing guidelines under 18 U.S.C. § 3582(c)(2).
9 Until recently, motions for compassionate release could only be brought to the
10 Court by the Director of the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A) (2002).
11 However, after the December 2018 passage of the First Step Act, defendants may
12 now bring their own motions for compassionate release after exhausting
13 administrative remedies within the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A)
14 (2018).

15 The Court finds that Defendant has effectively exhausted her administrative
16 remedies by petitioning the BOP, giving them notice, and being told she does not
17 have any other administrative path or remedies she can pursue. Any further
18 attempt to exhaust administrative remedies at this time would be futile.
19 Accordingly, the Defendant's motion for reduction of sentence is properly before
20 the Court.

1 A defendant may be eligible for compassionate release: (1) if the Court finds
2 “extraordinary or compelling reasons” to warrant a sentence reduction; or (2) if the
3 defendant is at least 70 years old, has served at least 30 years in prison pursuant to
4 a sentence imposed for the offense for which the defendant is currently imprisoned,
5 and the defendant is determined not to pose a risk of danger to the community. 18
6 U.S.C. § 3582(c)(1)(A). Under either eligibility prong, the Court must also find
7 that a sentence reduction is “consistent with applicable policy statements issued by
8 the [United States] Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The
9 Sentencing Guidelines instruct that the Court should consider the sentencing
10 factors set forth in 18 U.S.C. § 3553(a) when deciding a motion for compassionate
11 release, and that the Court should not grant a sentence reduction if the defendant
12 poses a risk of danger to the community, as defined in the Bail Reform Act.
13 U.S.S.G. § 1B1.13.

14 **B. Extraordinary and Compelling Reasons**

15 Defendant moves for compassionate release on the grounds that
16 “extraordinary and compelling reasons” justify a sentence reduction. ECF No. 829
17 at 13-21. The First Step Act did not define what “extraordinary and compelling
18 reasons” warrant a sentence reduction, but the compassionate release statute directs
19 the Court to consider the Sentencing Commission’s policy statements when
20 deciding compassionate release motions. 18 U.S.C. § 3582(c)(1)(A).

1 The Sentencing Commission’s policy statement on sentence reduction
2 mirrors the language of the compassionate release statute, but it has not yet been
3 updated to reflect the procedural changes implemented by the First Step Act.
4 U.S.S.G. § 1B1.13. “While that particular policy statement has not yet been
5 updated to reflect that defendants (and not just the [Bureau of Prisons (“BOP”)])
6 may move for compassionate release, courts have universally turned to U.S.S.G. §
7 1B1.13 to provide guidance on the ‘extraordinary and compelling reasons’ that
8 may warrant a sentence reduction.” *United States v. McGraw*, No. 2:02-cr-00018-
9 LJM-CMM, 2019 WL 2059488, at *2 (S.D. Ind. May 9, 2019) (gathering cases).
10 The sentence reduction policy statement outlines four categories of circumstances
11 that may constitute “extraordinary and compelling reasons” for a sentence
12 reduction: (1) the defendant suffers from a medical condition that is terminal or
13 substantially diminishes the defendant’s ability to provide self-care in a
14 correctional environment; (2) the defendant is at least 65 years old, is experiencing
15 a serious deterioration in health due to the aging process, and has served at least 10
16 years or 75% of his or her term of imprisonment; (3) family circumstances
17 involving the death or incapacitation of the caregiver of the defendant’s minor
18 child or the incapacitation of the defendant’s spouse or registered partner; or (4)
19 other reasons, other than or in combination with the other listed circumstances, that
20 are extraordinary and compelling. U.S.S.G. § 1B1.13, Application Note 1.

1 Here, Defendant moves for compassionate release on the grounds that her
2 multiple chronic illnesses and difficulty treating them while in custody constitute
3 “extraordinary and compelling reasons” for a sentence reduction. ECF No. 829.
4 Because Defendant does not allege that her present conditions are terminal or
5 diminish her ability to provide self-care while in custody, her motion for
6 compassionate release is best addressed under the “other reasons” category.

7 Defendant, age 64, has chronic obstructive pulmonary disease (COPD),
8 including significant emphysema. ECF Nos. 762 (sealed medical records), 700 at
9 19 (sealed Presentence Investigation Report). Defendant alleges that her medical
10 conditions have worsened while incarcerated without her prescribed inhaler and
11 that she struggles to breathe daily. ECF No. 829 at 18. Because she is housed in a
12 local jail facility where most inmates are recently arrested and in pretrial
13 confinement, there is constant and significant turnover of new people coming in
14 and out of the facility from off the streets. *Id.* at 19. Because it is impossible to
15 practice social distancing or isolation in a jail setting, the pandemic will be
16 devastating when it reaches jail populations.

17 Defendant is the most susceptible to the devastating effects of COVID-19.
18 She is in the most susceptible age category (over 60 years of age) and her COPD
19 and emphysema make her particularly vulnerable.

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C. Sentencing Commission Policy Statements

The Sentencing Guidelines instruct that the Court should consider the sentencing factors set forth in 18 U.S.C. § 3553(a) when deciding a motion for compassionate release, and that the Court should not grant a sentence reduction if the defendant poses a risk of danger to the community, as defined in the Bail Reform Act. U.S.S.G. § 1B1.13.

Defendant does not present a risk of danger to the community as articulated in 18 U.S.C. § 3142(g). On January 14, 2019, Defendant was released pending trial without incurring any violations through sentencing. The underlying criminal conduct was not a crime of violence, but rather white-collar fraud. The Court has reviewed all the factors to be considered in imposing a sentence, 18 U.S.C. § 3553(a), and does not find any one factor or combination of factors to preclude the remedy here.

That other Defendants received home detention does not impact the Court's decision here. Each Defendant presents with an individualized level of culpability, life circumstances and personal background that warrants individualized sentences.

The Court was aware of Defendant's underlying medical condition and took that into consideration at the time of sentencing. In normal times, Defendant's condition would be manageable. These are not normal times, however.

1 The Court will exercise its discretion to reduce Defendant's sentence
2 because extraordinary and compelling reasons warrant such a reduction.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 4 1. Defendant's Motion to Expedite, ECF No. 830, is **GRANTED**.
5 2. Defendant's Motion for Reduction of Sentence, ECF No. 829, is
6 **GRANTED**.
7 3. Simultaneously herewith, the Court will enter an AMENDED Judgment
8 imposing a sentence of "time served" and converting the remaining term
9 of incarceration into eight (8) months of home detention as an additional
10 condition of supervised release.
11 4. The United States Marshal Service and/or the United States Bureau of
12 Prisons shall promptly release Defendant from custody.

13 The District Court Executive is directed to enter this Order and furnish
14 copies to counsel, the United States Marshal Service, and the Probation Office.

15 **DATED** March 31, 2020.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge